

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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ANTHONY POPE,

Movant,

-against-

UNITED STATES OF AMERICA,

Respondent.  
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ORDER OF DISMISSAL

11 Civ. 2799 (SHS)

94 Cr. 0631-07 (SHS)

SIDNEY H. STEIN, United States District Judge:

By Order dated May 9, 2011, Movant was given the opportunity to withdraw his Motion brought under Fed. R. Civ. P. 60(b). The Motion was construed as seeking relief pursuant to 28 U.S.C. § 2255 and the Court warned that if Movant did not withdraw it, it would remain designated as a § 2255 Motion. Movant was also directed to show cause by Affirmation within sixty (60) days why his Motion should not be dismissed as a time-barred § 2255 Motion. On June 1, 2011, Movant filed an Affirmation insisting that the relief he seeks can be pursued under Fed. R. Civ. P. 60(b). On June 6, 2011, Movant filed a "Motion in Support of Movant's Affirmation," seeking "a hearing on the Court's lack of jurisdiction to proceed." Because his Fed. R. Civ. P. 60(b) Motion challenges the criminal Judgment in United States v. Pope, No. 94 Cr. 0631-07, it is properly construed as a § 2255 Motion. See Harris v. United States, 367 F.3d 74, 77 (2d Cir. 2004) ("relief under Rule 60(b) is available for a previous habeas proceeding only when the Rule 60(b) motion attacks the integrity of the previous habeas proceeding rather than the underlying criminal conviction"). Because Movant has not demonstrated why his construed

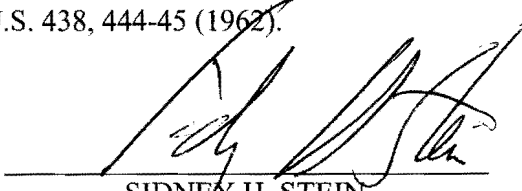
§ 2255 Motion is timely or why the applicable limitations period should be equitably tolled, it is dismissed as time-barred and the remaining "Motion" is denied as moot.

**CONCLUSION**

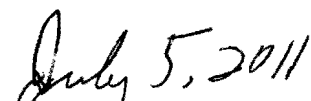
The Fed. R. Civ. P. 60(b) Motion, construed as seeking relief pursuant to 28 U.S.C. § 2255, is dismissed as time-barred. The remaining "Motion" is denied as moot. The Clerk of Court is directed to send a copy of this Order and the accompanying Judgment to Movant at the United States Penitentiary "Hazelton" at P.O. Box 2000, Bruceton Mills, West Virginia 26525. The Clerk of Court is further directed to make this facility Movant's address of record with respect to the civil action with the docket number 11 Civ. 2799. As Movant has made no substantial showing of the denial of a constitutional right, a certificate of appealability will not issue. See 28 U.S.C. § 2253(c).

The Court certifies pursuant to 28 U.S.C. § 1915(a)(3) that any appeal from this Order would not be taken in good faith and therefore *in forma pauperis* status is denied for the purpose of an appeal. See Coppedge v. United States, 369 U.S. 438, 444-45 (1962).

SO ORDERED:

  
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SIDNEY H. STEIN  
United States District Judge

Dated:

  
New York, New York